

This Project Finance Agreement (including all exhibits and attachments hereto, this "Agreement") is dated as of the date set forth on the first page of this Agreement, by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California (the "State Water Board"), and the Recipient identified on the first page of this Agreement:

WITNESSETH:

WHEREAS, the United States of America, pursuant to Title VI of the federal Water Pollution Control Act (as such has been and may be amended from time to time, the "Clean Water Act") requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the State as a condition to receipt of capitalization grants under the Clean Water Act; and

WHEREAS, the State of California (the "State") has established a Clean Water State Revolving Fund ("CWSRF") pursuant to Chapter 6.5 of Division 7 of the California Water Code (the "State Act") to be used for purposes of the Clean Water Act; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (ARRA) provides funding through the CWSRF for the purpose of projects that will preserve and create jobs and promote economic recovery, assist those most impacted by the recession, invest in environmental protection infrastructure that will provide long-term economic benefits; and

WHEREAS, ARRA authorizes subsidization for ARRA funds in the CWSRF over and above that authorized by the Clean Water Act, specifically principal forgiveness and interest rate savings; and

WHEREAS, the State Water Board will lose its ARRA allocation for the CWSRF if time schedule requirements set forth in ARRA are not met; and

WHEREAS, the State Water Board has the responsibility to administer the CWSRF and to provide financial assistance from the CWSRF to recipients for the construction of eligible projects, as provided in the State Act; and

WHEREAS, the State Water Board is responsible under the Clean Water Act and the State Act for determining the eligibility of projects for financial assistance from the CWSRF, determining a reasonable schedule for financing and construction of projects, and for ensuring compliance with the Clean Water Act and the terms and conditions of an applicable project finance agreement; and

WHEREAS, the Recipient has submitted to the State Water Board an application for financial assistance from the CWSRF, for the purpose of financing or refinancing the Project described below, and the State Water Board has reviewed and approved said application; and

WHEREAS, the Recipient has or will incur costs incurred in connection with, the planning, design, acquisition, construction and installation of the project or projects described in Exhibit A hereto (such projects being herein collectively referred to as the "Project"); and

WHEREAS, the Recipient understands that the terms of its obligation to repay this financial assistance depend significantly on compliance with the time schedule set forth in this Agreement; and

WHEREAS, on the basis of the Recipient's application and the representations and warranties set forth herein, the State Water Board proposes to assist in the financing of the costs of the Project and/or to refund outstanding bonds, notes or other debt obligations of the Recipient, if any, issued to finance the Project, and the Recipient desires to participate as a recipient of financial assistance from the CWSRF and evidence its obligation to repay, upon the terms and conditions as hereinafter set forth in this Agreement, all pursuant to the Clean Water Act and ARRA;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

## ARTICLE I DEFINITIONS

### 1.1 Definitions.

Unless otherwise specified, each capitalized term used in this Agreement (including the Exhibits hereto) has the following meaning:

"Additional Payments" means the Additional Payments described in Section 3.1(c) of this Agreement.

"Agreement" means the Project Finance Agreement, dated as of the date set forth on the first page hereof, by and between the State Water Board and the Recipient, including all exhibits and attachments thereto.

"Allowance" means an amount to help defray the planning, design, and construction engineering and administration costs of the Project.

"Authorized Representative" means the duly appointed representative of the Recipient. For all authorized representatives, a certified original of the authorizing resolution that designates the authorized representative, by title, must accompany the first payment request, and any other documents or requests required or allowed under this Agreement.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete.

"CWSRF" means Clean Water State Revolving Fund.

"Division" means the Division of Financial Assistance of the State Water Board, or any other segment of the State Water Board authorized to administer the CWSRF.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period hereafter selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

"Force Account" means the use of the Recipient's own employees or equipment for construction of the Project.

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Operations and Maintenance Costs" means, so long as outstanding System Obligations [other than the Obligation] are outstanding, the definition of such term as defined therein, and thereafter, the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with generally accepted accounting principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

"Policy" means the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," adopted on February 16, 1995, as most recently

amended, the State Water Board's "Strategy for Implementing State Revolving Fund for Expanded Use Projects", and/or Board Resolution [REDACTED]

"Project" means the Project as described in Exhibit A and in the documents thereby incorporated by reference.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first. This date shall be synonymous with the date specified in the "Initiation of Operation" form submitted as part of the Approval of Award package.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance from the CWSRF under the federal Clean Water Act, which are allowable costs as defined under the Policy and which are reasonable, necessary and allocable by the Recipient to the Project under generally accepted accounting principles, plus capitalized interest.

"Project Funds" means funds disbursed by the State Water Board to the Recipient for purposes of this Agreement.

"Recipient" means the recipient of Project Funds, as identified on the front page of this Agreement.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board, an administrative and regulatory agency of the State of California.

"System" means for the purposes of a wastewater project, all wastewater collection, transport, treatment, storage and disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed. For the purposes of a water recycling project, "System" means all wastewater, water recycling, and/or potable water collection, transport, treatment, storage and/or disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed. For the purposes of all other projects, "System" means all nonpoint source control or estuary enhancement facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

#### 1.2 Exhibits and Appendices Incorporated.

All exhibits and appendices to this Agreement, including any amendments and supplements hereto, are hereby incorporated herein and made a part of this Agreement.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

### 2.1 General Recipient Commitments.

The Recipient accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments made by the Recipient in its application, accompanying documents, and communications filed in support of its request for financial assistance.

### 2.2 Completion of Project.

The Recipient agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A.

### 2.3 Project Certification.

One (1) year after initiation of operation, the Recipient shall certify to the State Water Board whether or not the Project, as of that date, meets applicable design specifications and effluent limitations. If the Recipient cannot certify that the Project meets such specifications and limitations at that time, the Recipient shall submit a corrective action report. The corrective action report shall include an estimate of the nature, scope, and cost of the corrective action, and a time schedule to expeditiously make all needed corrections, at the Recipient's expense, to allow affirmative certification for the Project.

Failure to submit an affirmative certification, or a corrective action report that meets the above requirements and is satisfactory to the Division within fifteen (15) months of the Project Completion date will cause the State Water Board to stop processing any pending or future applications for new financial assistance, withhold payments on any existing financial assistance, and begin administrative proceedings pursuant to sections 13267 and 13268 of the Water Code.

### 2.4 Award of Construction Contracts.

- (a) The Recipient agrees to award the prime construction contract no later than the date specified in Exhibit A. Failure to meet this date will have serious consequences, as specified in Exhibit B.
- (b) The Recipient agrees to promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project.
- (c) The Recipient agrees to make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

### 2.5 Notice.

The Recipient agrees to promptly notify the Division in writing of:

- (a) Any substantial change in scope of the Project. The Recipient agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;
- (b) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;

- (c) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (d) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient agrees to implement appropriate actions as directed by the Division;
- (e) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- (f) Any monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board (Regional Water Board) staff may observe and document such activities;
- (g) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days notice; and
- (h) Completion of Construction of the Project, and actual Project Completion.

## 2.6 Project Access.

The Recipient agrees to insure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the life of the Project. The Recipient acknowledges that the Project records and locations are public records.

## 2.7 Project Completion; Initiation of Operations.

Upon Completion of Construction of the Project, the Recipient agrees to expeditiously initiate Project operations. The Recipient agrees to make all reasonable efforts to meet the Project Completion date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Project Completion date no less than 90 days prior to the Project Completion date. The Division will not unreasonably deny such a timely request, but the Division will deny requests received after this time.

## 2.8 Continuous Use of Project; Lease or Disposal of Project.

The Recipient agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all Project Funds together with accrued interest and any penalty assessments which may be due.

## 2.9 Reports.

- (a) Quarterly Reports. The Recipient agrees to expeditiously provide, during construction of the Project, status reports on the construction of the project no less frequently than quarterly,

starting with the issuance of the Notice To Proceed to the construction contractor. At a minimum the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed; a listing of change orders including amount, description of work; and change in contract amount and schedule; any problems encountered, proposed resolution, schedule for resolution, status of previous problem resolutions, and number of jobs created or preserved due to the Project.

(b) As Needed Reports. The Recipient agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the CWSRF Program or to fulfill any reporting requirements of the federal government.

## 2.10 Federal Disadvantaged Business Enterprise (DBE) Reporting

The Recipient agrees to report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. Reports must be submitted to the Division semiannually within ten (10) calendar days following April 1 and October 1 until such time as the "Notice of Completion" is issued.

## 2.11 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles the Recipient agrees to:
- (1) Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
  - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
  - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (6) If a Force Account is used by the Recipient for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs may be paid with prior written approval by the Division of the Recipient's indirect cost proposal.
- (b) The Recipient shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Recipient shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of six (6) years after repayment of Project Funds, if any, or six (6) years after Project Completion if no repayment is required. The Recipient shall require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency, the Office of Inspector General, or any authorized representatives of the aforementioned, and shall allow interviews during normal business

hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar right regarding audit, interviews, and records retention in any subcontract related to the performance of this Agreement.

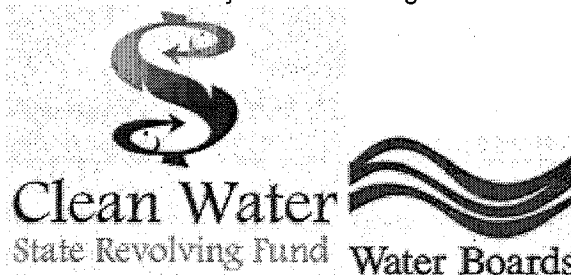
## 2.12 Final Project Reports; Audit.

- (a) Within one hundred twenty (120) days after Project Completion, the Recipient agrees to provide to the Division a final cost summary report on the Project. The summary shall include at a minimum, a statement of:
  - (1) Total Project Costs;
  - (2) Total Project Costs which are eligible for financing assistance under this Agreement;
  - (3) The total amount of assistance funds received;
  - (4) The amount of interest earned, if any, on assistance funds before disbursement on account of incurred Project costs. If no interest has been earned, this fact shall be expressly stated.
  - (5) The report shall be accompanied by such other financial information as may be reasonably required by the Division to verify Recipient entitlement to financial assistance, to assure program integrity of the CWSRF Program, and to comply with any federal requirements. The report shall be certified as correct by a duly Authorized Representative of the Recipient.
- (b) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit shall be in the form required by the Division.
- (c) Audit disallowances will be returned to the State Water Board.

## 2.13 Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of 3/4 inch thick exterior grade plywood or other approved material in a prominent location on the Project site. The sign shall

include the following color logos:



(logos available from the Division) and the following disclosure statement:

Funding for this project has been provided in full or in part by the American Recovery and Reinvestment Act of 2009 and the Clean Water State Revolving Fund, through an agreement with the State Water Resources Control Board.

The Project sign may include another agency's required promotional information so long as the above logo and disclosure statement are equally prominent on the sign. The sign shall be painted in a professional manner.

Include the following disclosure statement in any document, written report, or brochure prepared in whole or in part pursuant to this Agreement:

Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code, § 7550, 40 CFR § 31.20.)

### ARTICLE III FINANCING PROVISIONS

#### 3.1 Amounts Payable by the Recipient.

- (a) **Contingent Obligation to Repay Project Funds.** The Recipient's obligation to repay Project Funds is forgiven contingent on meeting the requirements of ARRA and Exhibit A. Failure to meet these requirements for any reason whatsoever, within or outside the control of the Recipient, will result in automatic suspension and termination of this Agreement and immediate repayment of all disbursed Project Funds plus interest at the highest legal rate due immediately whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part.

Where repayment is required, the Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement.

- (b) **Project Costs.** The Recipient agrees to pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (c) **Additional Payments.** In addition to any repayment required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board,



stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

### 3.2 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt or liability of the State and any such obligation shall be payable solely out of the moneys in the CWSRF made available pursuant to this Agreement.

### 3.3 [reserved]

### 3.4 Disbursement of Project Funds; Availability of Funds.

(a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:

- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in the [REDACTED] referenced in Exhibit A from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
- (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with the budget amounts referenced in Exhibit B.
- (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.9 above.
- (4) The Recipient agrees that it will not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
- (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
- (6) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (7) The Recipient agrees that it shall not be entitled to any interest on undisbursed Project Funds.

(b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this contract are deferred because sufficient funds are unavailable, such disbursement will be made to the Recipient when sufficient funds do become available.

### 3.5 Withholding of Disbursements.

The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:

- (a) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
- (b) The Recipient fails to maintain reasonable progress toward completion of the Project.

### 3.6 Withholding.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the financial assistance specified in this Agreement until completion of the Project to the reasonable satisfaction of the State Water Board. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon completion of the Project.

### 3.7 Accounting Standards and Federal Single Audit Act.

The Recipient agrees to comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient agrees to be bound by and to comply with, the provisions and requirements of the federal Single Audit Act of 1984 (Pub. L. 98-502) Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto. The Recipient will maintain separate Project accounts in accordance with generally accepted accounting principles. The Recipient shall comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135(l).)

## ARTICLE IV MISCELLANEOUS PROVISIONS

### 4.1 Timeliness.

**TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

### 4.2 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

### 4.3 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State in the form of a formal written amendment.

#### 4.4 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.

#### 4.5 Compliance with Law, Regulations, etc.

- (a) The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Recipient agrees that, to the extent applicable, the Recipient will:
  - (1) Comply with the provisions of the adopted environmental mitigation plan for the term of this Agreement;
  - (2) Comply with the State Water Board's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," February 16, 1995, as amended from time to time;
  - (3) Comply with and require its contractors and subcontractors on the Project to comply with federal disadvantaged business enterprise (DBE) requirements; and
  - (4) Comply with and require its contractors and subcontractors to comply with the list of federal laws certified to by the Recipient.

#### 4.6 Conflict of Interest.

The Recipient certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

#### 4.7 Damages for Breach Affecting ARRA Compliance.

In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project Funds to be used pursuant to the provisions of ARRA, or if such breach shall result in an obligation on the part of the State Water Board to reimburse the federal government, the Recipient shall immediately reimburse the State Water Board in an amount equal to any damages paid by or loss incurred due to such breach.

#### 4.8 Disputes.

- (a) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Deputy Director, or his or her authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Recipient and to the State Water Board's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Recipient, the Recipient mails or otherwise furnishes a written appeal of the decision to the State Water Board's Executive Director. The decision of the State Water Board's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Recipient shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.

- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) The Recipient shall continue with the responsibilities under this Agreement during any dispute.

#### 4.9 Governing Law.

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

#### 4.10 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State under this Agreement.

#### 4.11 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State Water Board.

#### 4.12 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (b) The Recipient, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

#### 4.13 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

#### 4.14 Operation and Maintenance; Insurance.

The Recipient agrees to properly staff, operate and maintain all portions of the Project during its useful life in accordance with all applicable state and federal laws, rules and regulations.

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund funded in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens.

#### 4.15 Permits, Subcontracting, Remedies and Debarment.

The Recipient shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

Any subcontractors, outside associates, or consultants required by the Recipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Project Representative during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates, or consultants, shall be subject to the prior written approval of the Division.

The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code, § 4477)

The Recipient certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- (b) Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

- (d) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

#### 4.16 Prevailing Wages.

The Recipient agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to assure that the prevailing wage provisions of Labor Code section 1771 are being met.

#### 4.17 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

#### 4.18 Related Litigation.

Under no circumstances may a Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

#### 4.19 Rights in Data.

The Recipient agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Recipient may copyright the same, except that, as to any work which is copyrighted by the Recipient, the State reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. (40 CFR §§ 31.34, 31.36)

#### 4.20 State Reviews and Indemnification.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend and hold harmless the State Water Board against any loss or liability arising out of any claim or action brought against the State Water Board from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and California Water Code section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any

information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against the State Water Board with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement.

#### 4.21 State Water Board Action; Costs and Attorney Fees.

The Recipient agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that the each party shall bear its own costs and attorney fees.

#### 4.22 Termination; Immediate Repayment; Interest.

- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time during the useful life of the Project, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to any funds disbursed hereunder, including accrued interest, and all penalty assessments due. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date of full repayment by the Recipient.

#### 4.23 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

#### 4.24 Useful Life of Project.

The useful life of the Project, commencing at Project Completion, is at least equal to the term of this Agreement, as set forth in Exhibit B hereto.

#### 4.25 Venue.

The State Water Board and the Recipient hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

#### 4.26 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

«RECIPIENTCAPS»:

By: \_\_\_\_\_  
Name: «Authorized Rep»  
Title: «Title»  
Date: \_\_\_\_\_

STATE WATER RESOURCES CONTROL BOARD

By: \_\_\_\_\_  
Name: Barbara Evoy  
Title: Deputy Director, Division of Financial Assistance  
Date: \_\_\_\_\_



EXHIBIT A – SCOPE OF WORK & INCORPORATED DOCUMENTS

1. The Recipient agrees to start construction no later than [REDACTED] TIME IS OF THE ESSENCE.
2. Completion of Construction date is hereby established as [REDACTED].
3. The Project Completion date is hereby established as [REDACTED].
4. The Project, commonly known as [REDACTED] generally consists of [REDACTED], as more particularly described in the financial assistance application of the Agency and the accepted plans and specifications for the Project, if any.
5. Incorporated by reference into this Agreement are the following documents: [modify per GA]
  - (a) the Facilities Plan Approval Letter of [REDACTED];
  - (b) the Preliminary Funding Commitment of [REDACTED];
  - (c) the Final Plans & Specifications of [REDACTED], which are the basis for the construction contract to be awarded by the Recipient to the [REDACTED];
  - (d) the Approval of Award Letter of [REDACTED]; and
  - (e) [the WDRs or NPDES permit].
6. Any funds disbursed pursuant to this Agreement are to supplant grant funds previously awarded to the Recipient under Agreement No. [REDACTED] (Previous Grant Agreement). That Previous Grant Agreement shall be amended and terminated once the State releases funds sufficient to pay all eligible costs incurred prior to December 18, 2008. If the Recipient fails to amend and terminate the Previous Grant Agreement upon the request of the Division, this Agreement shall terminate and all funds disbursed hereunder shall be repaid to the State Water Board, due immediately at the highest legal rate of interest.

[continue & insert SOW from GA]

## EXHIBIT B – PROJECT FINANCING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is Written Dollar Amount dollars and no cents (\$Dollar Amount).
2. Project Funding. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of Written Dollar Amount dollars and no cents (\$Dollar Amount).
3. Contingent Principal Forgiveness. Contingent on the Recipient's performance of its obligations under Exhibits A and E, the State Water Board agrees to forgive all of the principal due under this Agreement. If, for any reason whatsoever within or outside the Recipient's control, or any combination thereof, the Recipient fails to satisfy the conditions under these exhibits, the Recipient will be considered to have breached this Agreement, no principal will be forgiven, and the Recipient agrees to repay all Project Funds IMMEDIATELY at the highest legal rate of interest.
4. The term of this agreement is from the date specified on the first page of this document to                     .  
Choose one of the #5s:
5. Budget costs are contained in the Approval of Award Letter(s), incorporated by reference in Exhibit A. (Note that this agreement will be amended to incorporate Approval of Award.)
5. Budget costs are as follows: [Insert Line Item Budget from PM]

**EXHIBIT C  
CWSRF PAYMENT SCHEDULE**

No payments due, contingent on Recipient's timely performance of its obligations under Exhibits A and E.

If Recipient fails to timely perform its obligations under Exhibits A and E, complete repayment will be due IMMEDIATELY at the highest legal rate of interest.

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**EXHIBIT D — SPECIAL CONDITIONS**

D.1 [Insert Special Environmental Conditions from RPU]

D.2 [Insert Special Financial Conditions from PM]

D.3 Previously Frozen Grant Special Conditions – James & Leslie will write

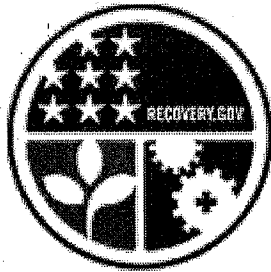
- (a) Data Management. This Project includes appropriate data management activities so that Project data can be incorporated into appropriate statewide data systems.
- (b) Supplemental Environmental Projects. The Recipient shall not use funds disbursed pursuant to this Agreement for supplemental environmental projects required by Regional Water Boards.
- (c) Travel and Per Diem. Any reimbursement for necessary travel shall be at rates not to exceed those set by the Department of Personnel Administration. These rates may be found at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>. Reimbursement will be at the State travel and per diem amounts that are current as of the date costs are incurred by the Recipient. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the Project Manager.
- (d) Watershed Management Plan Consistency. The Recipient certifies that any watershed protection activity undertaken as part of this Project will be consistent with the applicable, adopted, local watershed management plans and the applicable Water Quality Control Plan (Basin Plan) adopted by a Regional Water Board, where such plans exist. Any such activity occurring in the San Gabriel and Los Angeles watersheds shall be consistent with the San Gabriel and Los Angeles River Watershed and Open Space Plan as adopted by the San Gabriel and Lower Los Angeles Rivers and Mountain Conservancy and the Santa Monica Mountains Conservancy.
- (e) The Recipient certifies that it has a Labor Compliance Program (LCP) in place or has contracted with a third party that has been approved by the Director of the Department of Industrial Relations (DIR) to operate an LCP pursuant to Labor Code, section 1771.5 and section 16423 of title 8 of the California Code of Regulations. Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.
- (f) [Continue by adding all conditions from Grant Agreement Exhibit D]

## EXHIBIT E – FEDERAL ARRA CONDITIONS

### 1. ARRA Special Conditions

- (a) **ARRA Requirements.** The Recipient understands and acknowledges that financing pursuant to this agreement is provided according to the American Recovery and Reinvestment Act of 2009 (ARRA). The Recipient agrees to perform its obligations under this Agreement in compliance with the letter and the spirit of ARRA. The Recipient understands and agrees that failure to comply with ARRA will automatically terminate any provisions of this agreement that are authorized solely by ARRA, including, but not limited to, provisions related to principal forgiveness.
- (b) **Timeline Absolute.** The Recipient understands that, for any reason whatsoever, foreseeable or unforeseeable, negligent, intentional, or due to any factor outside the Recipient's control, should the Recipient fail to start construction prior to the date specified in Exhibit A, that no principal will be forgiven and that complete repayment will be due with interest, as specified in Exhibit B.
- (c) **Buy American.** The Recipient shall not use Project Funds to purchase iron, steel, and manufactured goods produced outside of the United States. The Recipient hereby certifies that all iron, steel, and manufactured goods used in the Project were produced in the United States.
- (d) **Waste, Fraud, & Abuse.** The Recipient shall prevent fraud, waste, and the abuse of Project Funds.
- (e) **Whistleblower Rights Notice.** The Recipient shall post notice of the rights and remedies provided to state and local government and contractor whistleblowers as set forth in Section 1553 of ARRA.
- (f) **Reports.** In addition to the reports specified in this Agreement, the Recipient may be asked for weekly reports related to the goals of ARRA, including jobs created or saved. The Recipient agrees to provide such reports in an expeditious fashion.
- (g) **Land or Easement Acquisition.** The Recipient shall not use Project Funds for the purchase of land, easements, or interests in land.

### 2. Implementation of Recommendations. Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may make necessary amendments to this Agreement upon the request of the U.S. Environmental Protection Agency or the recommendation of the Recovery Accountability and Transparency Board as set forth in Section 1523 of ARRA.



Clean Water  
State Revolving Fund

[RECIPIENT CAPS]

and

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



Water Boards

PROJECT FINANCE AGREEMENT

STATE REVOLVING FUND PROJECT NO. [ ]

AGREEMENT NO. [ ]

Dated as of \_\_\_\_\_

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